

1 Mark E. Ellis - 127159
Brandon L. Reeves - 242897
2 ELLIS, LaVOIE, POIRIER, STEINHEIMER & McGEE LLP
555 University Avenue, Suite 200 East
3 Sacramento, CA 95825
Tel: (916) 283-8820
4 Fax: (916) 283-8821
mellis@ellislawgrp.com
5 breeves@ellislawgrp.com

6 Attorneys for Defendants
FEDERAL BOND & COLLECTION SERVICE, INC. D/B/A FBCS, INC.;
7 JOSEPH NEARY

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10 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION

12 YVONNE AGNES SCOTT,

13 Plaintiff,

14 v.

15 FEDERAL BOND AND COLLECTION
16 SERVICE, INC., D/B/A FBCS, INC., a
Pennsylvania corporation; JOSEPH NEARY,
17 individually and in his capacity; and OSIRIS
HOLDINGS, LLC, a California limited liability
18 corporation,

19 Defendants.

Case No.: 10-cv-02825-PVT

**ANSWER TO PLAINTIFF'S FIRST
AMENDED COMPLAINT BY
DEFENDANTS FEDERAL BOND AND
COLLECTION SERVICE, INC., D/B/A
FBCS, INC. AND JOSEPH NEARY**

DEMAND FOR JURY TRIAL

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21 Defendants FEDERAL BOND AND COLLECTION SERVICE, INC., D/B/A FBCS, INC. and
22 JOSEPH NEARY ("Defendants") hereby respond to the First Amended Complaint ("Complaint") of
23 Plaintiff YVONNE AGNES SCOTT ("Plaintiff") as follows:

24 1. As to Paragraphs 1, 4, 11, 23-25, 28-30, 33-35, 38-43, 46-48, and 51-56, Defendants
25 deny these allegations.

26 2. As to Paragraphs 2, 21, 31, and 44, these paragraphs do not contain allegations
27 against these answering Defendants which need to be admitted or denied.

28 3. As to Paragraphs 5-7, 10, 12-14, 17, 20, 26-27, 36-37, and 49-50, Defendants lack

1 sufficient information or belief to admit or deny the allegations in these Paragraphs and on that basis
2 Defendants deny them.

3 4. As to Paragraph 3, Defendants admit that this Court has federal question jurisdiction
4 pursuant to **15 U.S.C. § 1692k(d)**, but deny that this Court has jurisdiction pursuant to either **28**
5 **U.S.C. § 1337** and/or **28 U.S.C. § 1367**. Defendants deny that declaratory relief is available
6 pursuant to **28 U.S.C. §§ 2201** and/or **2202**.

7 5. As to Paragraph 8, Defendants admit that Federal Bond and Collection Service, Inc.
8 d/b/a FBCS, Inc. is a Pennsylvania corporation with a business address at 2200 Byberry Road, Suite
9 120, Hatboro, Pennsylvania. Defendants deny the remaining allegations in this Paragraph.

10 6. As to Paragraph 9, Defendants admit that Joseph Neary is employed by Federal Bond
11 and Collection Service, Inc., d/b/a FBCS, Inc., and that he has a business address located at 2200
12 Byberry Road, Suite 120, Hatboro, Pennsylvania. Defendants deny the remaining allegations in this
13 Paragraph.

14 7. As to Paragraph 15, Defendants admit that Plaintiff was sent a letter, but deny the
15 remaining allegations in this Paragraph.

16 8. As to Paragraphs 16 and 18, Defendants admit these allegations.

17 9. As to Paragraph 19, Defendants admit that the letter attached as Exhibit 1 does not
18 include the notice required by **Cal. Civ. Code § 1812.700(a)**, but deny that any violation occurred
19 with respect to the omission of that notice as the omission was cured in a timely manner pursuant to
20 **Cal. Civ. Code § 1788.30(d)**.

21 10. As to Paragraph 22, Defendants repeat and incorporate by reference their responses to
22 Paragraphs 1 through 21 as though fully stated herein.

23 11. As to Paragraph 32, Defendants repeat and incorporate by reference their responses to
24 Paragraphs 1 through 31 as though fully stated herein.

25 12. As to Paragraph 45, Defendants repeat and incorporate by reference their responses to
26 Paragraphs 1 through 44 as though fully stated herein.

27 Pursuant to **Federal Rule of Civil Procedure 8(c)**, Defendants set forth the following matters
28 constituting an avoidance or affirmative defense:

FIRST AFFIRMATIVE DEFENSE

13. Defendants allege that the Complaint, and each claim or cause of action contained therein, fails to state facts sufficient to constitute a claim or cause of action.

SECOND AFFIRMATIVE DEFENSE

14. Defendants allege that the Complaint, and each claim or cause of action therein, is barred by the applicable statute of limitations, including the limitations periods set forth in 15 U.S.C. § 1692k(d) and Cal. Civ. Code § 1788.30(f).

THIRD AFFIRMATIVE DEFENSE

15. Defendants allege that Plaintiff herself was negligent, careless, and/or committed intentional acts, in and about the matters alleged in the Complaint, and said negligence, carelessness and/or intentional acts caused and/or contributed to her injuries and/or damages.

FOURTH AFFIRMATIVE DEFENSE

16. Defendants allege that other persons and parties were careless and/or negligent, and/or committed intentional acts, and that this carelessness, negligence, or these intentional acts proximately contributed to the happening of the incidents referred to in the Complaint, and to the extent said negligence, carelessness and/or intentional acts caused and/or contributed to injuries and/or damages, then the damages alleged against these Defendants should be reduced or eliminated.

FIFTH AFFIRMATIVE DEFENSE

17. Defendants allege that Plaintiff failed and neglected to use reasonable care to protect herself and to minimize and/or mitigate the losses and/or damages asserted in the Complaint.

SIXTH AFFIRMATIVE DEFENSE

18. Defendants allege that all of their actions were taken in good faith and with a reasonable belief that such actions were legal, appropriate, and necessary.

SEVENTH AFFIRMATIVE DEFENSE

19. Defendants allege that they have no civil liability under the FDCPA, 15 U.S.C. §§ 1692, *et seq.*, or Rosenthal FDCPA, Cal. Civil Code §§ 1788, *et seq.*, pursuant to 15 U.S.C. § 1692k(c) and Cal. Civil Code § 1788.30(e) as any violation was unintentional and resulted from the maintenance of procedures reasonably adopted to avoid any such violation.

EIGHTH AFFIRMATIVE DEFENSE

20. Defendants allege that Plaintiff's Complaint, and each and every claim or cause of action therein, is barred by the privilege embodied in Cal. Civil Code § 47(b) and (c), or arising under federal and state common law.

NINTH AFFIRMATIVE DEFENSE

21. Defendants allege that Plaintiff's Complaint (and the claims or causes of action alleged therein) is barred because Defendants' actions were taken in reasonable reliance upon information provided by their client pursuant to Ducrest v. Alco Collections, Inc., 931 F.Supp. 459, 462 (M.D. La. 1999), and Hulse v. Ocwin, 195 F.Supp.2d 1188, 1210 (D. Or. 2002).

TENTH AFFIRMATIVE DEFENSE

22. Defendants allege that Plaintiff's Complaint, and each and every cause of action therein, is barred by the doctrine of unclean hands.

ELEVENTH AFFIRMATIVE DEFENSE

23. Defendants allege that any acts attributed to these Defendants were performed in good faith in conformity with advisory opinions of the Federal Trade Commission pursuant to 15 U.S.C. § 1692k(e).

TWELFTH AFFIRMATIVE DEFENSE

24. Defendants allege that the representations or statements made by Defendants were true, accurate at the time made, and/or otherwise were made in good faith and with a reasonable belief as to their truth, validity, and accuracy.

THIRTEENTH AFFIRMATIVE DEFENSE

25. Defendants are informed and believe and thereon allege that all alleged intentional acts or misrepresentations alleged in Plaintiff's Complaint and in the claims or causes of action alleged therein, were consented to by the Plaintiff.

FOURTEENTH AFFIRMATIVE DEFENSE

26. Defendants allege that statutory and common law immunities apply to the acts and/or omissions complained of in the Complaint on file herein.

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FIFTEENTH AFFIRMATIVE DEFENSE

27. Defendants allege that Plaintiff's Complaint, and each and every cause of action therein, is barred by the doctrine of estoppel and/or waiver.

SIXTEENTH AFFIRMATIVE DEFENSE

28. Defendants hereby allege the following affirmative defenses, including, but not limited to, those set forth in **Federal Rule of Civil Procedure 8(c)**, so as not to waive them at this time: assumption of risk, contributory negligence, duress, setoff, failure of consideration, fraud, illegality, license, failure to join an indispensable party, and abatement.

SEVENTEENTH AFFIRMATIVE DEFENSE

29. Defendants allege that Plaintiff's Complaint, and each and every claim or cause of action therein, is barred by the doctrines of *res judicata* and/or collateral estoppel.

EIGHTEENTH AFFIRMATIVE DEFENSE

30. Defendants allege that they have no civil liability under the Rosenthal FDCPA, pursuant to **Cal. Civil Code § 1788.30(d)**, as any alleged violation was cured.

NINETEENTH AFFIRMATIVE DEFENSE

31. Defendants presently have insufficient knowledge or information on which to form a belief as to whether Defendants may have additional, as yet unstated, defenses available. Defendants reserve the right to assert additional defenses in the event discovery indicates that such defenses would be appropriate.

WHEREFORE, Defendants pray for:

1. That Plaintiff takes nothing from these answering Defendants by this Complaint;
2. That Defendants be awarded judgment in this action;
3. For attorneys' fees incurred herein, pursuant to statute;
4. For costs of suit incurred herein; and

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5. For such other and further relief as the Court deems proper.

Dated: August 31, 2010

Ellis, LaVoie, Poirier, Steinheimer & McGee LLP

By /s/ Brandon L. Reeves
Brandon L. Reeves
Attorneys for Defendants
FEDERAL BOND & COLLECTION SERVICE,
INC. D/B/A FBCS, INC. AND JOSEPH NEARY

DEMAND FOR JURY TRIAL

Defendants FEDERAL BOND & COLLECTION SERVICE, INC. D/B/A FBCS, INC. AND
JOSEPH NEARY, hereby demand a jury trial in this matter.

Dated: August 31, 2010

Ellis, LaVoie, Poirier, Steinheimer & McGee LLP

By /s/ Brandon L. Reeves
Brandon L. Reeves
Attorneys for Defendants
FEDERAL BOND & COLLECTION SERVICE,
INC. D/B/A FBCS, INC. AND JOSEPH NEARY

CERTIFICATE OF SERVICE

I, Maria Gutierrez, declare:

I am a citizen of the United States, am over the age of eighteen years, and am not a party to or interested in the within entitled cause. My business address is 555 University Avenue, Suite 200 East, Sacramento, CA 95825.

On August 31, 2010, I served the following document(s) on the parties in the within action:

**ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT BY DEFENDANTS
FEDERAL BOND AND COLLECTION SERVICE, INC., D/B/A FBCS, INC. AND JOSEPH
NEARY; DEMAND FOR JURY TRIAL**

X	VIA ELECTRONIC SERVICE: The above-described document(s) will be delivered electronically through the Court's ECF/PACER electronic filing system, as stipulated by all parties to constitute personal service, to the following:
	BY MAIL: I am familiar with the business practice for collection and processing of mail. The above-described document(s) will be enclosed in a sealed envelope, with first class postage thereon fully prepaid, and deposited with the United States Postal Service at Sacramento, CA on this date, addressed as follows:
	BY HAND: The above-described document(s) will be placed in a sealed envelope which will be hand-delivered on this same date by _____, addressed as follows:
	VIA FACSIMILE: The above-described document(s) was transmitted via facsimile from the fax number shown on the attached facsimile report, at the time shown on the attached facsimile report, and the attached facsimile report reported no error in transmission and was properly issued from the transmitting facsimile machine, and a copy of same was mailed, on this same date to the following:
	VIA OVERNIGHT SERVICE: The above-described document(s) will be delivered by overnight service, to the following:

Fred W. Schwinn
Consumer Law Center, Inc.
12 South First Street
Suite 1014
San Jose, CA 95113-2404

Attorneys for
Plaintiff YVONNE AGNES SCOTT

I declare under penalty of perjury under the laws of the State of California that the foregoing is a true and correct statement and that this Certificate was executed on August 31, 2010.

By 
Maria Gutierrez